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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CFLL LICENSE NOS.: 603-9260:603-K653;
13 OVERSIGHT,) 605-4732; AND 60DBO-35935
)
14 Complainant,) CONSENT ORDER
)
15 v.)
)
16 FASTCREDIT FINANCIAL, INC.,)
17)
18 Respondent.)
)

19
20 This Consent Order (Consent Order) is entered into by and between the Commissioner of
21 Business Oversight (Commissioner) and FastCredit Financial, Inc. (FastCredit) (collectively the
22 parties), and is made with respect to the following facts:

23 **I**

24 **Recitals**

25 A. FastCredit is a corporation in good standing, duly formed and existing pursuant to the
26 laws of the State of California, and authorized to conduct business in California.

27 B. FastCredit is licensed by the Commissioner as a finance lender pursuant to the
28 California Finance Lenders Law (CFL) (Fin. Code § 22000 et seq.). FastCredit has its principal

1 place of business under the CFLL license located at 1730 W. Olympic Boulevard, Suite 520, Los
2 Angeles, California 90015. FastCredit has three inactive branch office locations under its CFLL
3 license.

4 C. The Department of Business Oversight (Department), through the Commissioner, has
5 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
6 lending and brokering pursuant to the CFLL.

7 D. Warren Berghoff is the president of FastCredit, and, as such, is authorized to enter
8 into this Consent Order on behalf of FastCredit.

9 E. During a regulatory examination of FastCredit commenced in 2015, the
10 Commissioner discovered that FastCredit had (i) understated annual percentage rates and finance
11 charges in violation of Financial Code section 22346 and the Code of Federal Regulations, title 12,
12 section 1026.18; (ii) overcharged administrative fees for loans of \$2,500.00 or less in violation of
13 Financial Code section 22305; (iii) overcharged interest on loans of less than \$2,500.00 in violation
14 of Financial Code sections 22303 or 22304; (iv) charged interest prior to loan disbursement in
15 violation of California Code of Regulations, title 10, section 1426; (v) failed to refund overpayments
16 at payoff in violation of California Code of Regulations, title 10, section 1426; (vi) charged
17 excessive late fees in violation of Financial Code section 22320.5; (vii) charged excessive non-
18 sufficient fund fees in violation of Financial Code section 22320; (viii) charged excessive
19 repossession fees in violation of Financial Code 22202, subdivision (f) by not paying those fees to a
20 licensed repossession agency; (ix) charged prohibited processing debit/credit card fees in violation of
21 Financial Code sections 22303, 22304, 22306 and 22307; (x) charged prohibited extension/deferral
22 fees in violation of Financial Code sections 22303, 22304, 22306 and 22307; (xi) charged prohibited
23 GPS fees in violation of Financial Code sections 22303, 22304, 22306, 22307 and 22311; (xii)
24 charged prohibited auction/selling costs in violation of Financial Code section 22202, subdivision
25 (f); (xiii) charged prohibited field chase fees in violation of Financial Code section 22202,
26 subdivision (f); (xiv) charged prohibited storage fees in violation of Financial Code section 22202,
27 subdivision (f); (xv) improperly stating minimum interest and/or prepayment penalties in promissory
28 notes in violation of Financial Code section 22337, subdivision (c); (xvi) failed to consider

1 borrowers' ability to repay in violation of Financial Code section 22161 and California Code of
2 Regulations, title 10, section 1452; (xvii) charged improper key/key repairs as repossession fees in
3 violation of Financial Code section 22202, subdivision (f); (xviii) charged non-filing fees for the
4 same collateral in violation of Financial Code section 22236; (xix) failed to maintain documentation
5 to support the Department of Motor Vehicle fees in violation of Financial Code section 22336,
6 subdivision (a); and (xx) failed to disclose the amount disbursed to the borrower/third party in
7 violation of California Code of Regulations, title 10, section 1454, subdivision (a) (2).

8 F. It is the intention and desire of the parties to resolve this matter without the necessity
9 of a hearing and/or other litigation.

10 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
11 forth herein, the parties agree as follows:

12 **II**

13 **Terms and Conditions**

14 1. Purpose. This Consent Order is intended to resolve the findings of the 2015
15 regulatory examination of FastCredit described in paragraph E above in a manner that avoids the
16 expense of a hearing, and possible further court proceedings, is in the public interest, protects
17 consumers, and is consistent with the purposes, policies, and provisions of the CFLL.

18 2. Finality of Consent Order. FastCredit agrees to comply with this Consent Order and
19 stipulates this Consent Order is hereby deemed final.

20 3. Final Desist and Refrain Order: In accordance with Financial Code section 22712,
21 FastCredit stipulates that it is ordered to immediately discontinue the violations noted in Paragraph E
22 above.

23 4. Administrative Penalty. FastCredit agrees to pay an administrative penalty in the
24 amount of \$102,500.00 payable in two installments of \$51,250.00 with the first payment due within
25 90 days of the effective date of this Consent Order. The second and final payment shall be due 90
26 days after the due date of the previous payment. The payments shall be made by cashiers' check
27 payable to the Department of Business Oversight and shall be sent to the Department, attention,
28

1 Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052. Notice of all
2 payments shall be given pursuant to Paragraph 31 below.

3 5. Refunds. FastCredit agrees to make refunds to borrowers affected by the overcharges
4 described in paragraph E above totaling \$1,220,761.52, excluding therefrom refunds in the amount
5 of \$39,546.91, which FastCredit represents have already been credited and/or refunded to the
6 affected borrowers. Subject to paragraphs 6 and 7 below, borrower refunds shall be made over an
7 18-month period commencing on the effective date of this Consent Order.

8 6. Outstanding Loan Refunds. FastCredit shall make refunds on all presently
9 outstanding loans, including those previously charged off, within 90 days of the effective date of this
10 Consent Order.

11 a. For non-delinquent outstanding loans, FastCredit shall credit the borrowers' account
12 to reduce the principal balance by the refund amount: if any refund amount is remaining, then
13 FastCredit will send the remaining refund amount by check to the borrower.

14 b. For delinquent outstanding loans, FastCredit shall apply the refund amount first
15 towards the delinquency, then towards the principal, and the remainder, if any, shall be remitted by
16 check to the borrower.

17 c. For charged-off outstanding loans, FastCredit shall apply the refund amount first
18 towards the delinquency, then towards the principal, and the remainder, if any, shall be remitted by
19 check to the borrower. As to charged-off outstanding loans, FastCredit shall apply the reduction
20 directly to any loans it retained for collection and advise the assignee of the reduced outstanding
21 balance for those assigned for collection. FastCredit shall also advise each borrower of a charged-
22 off outstanding loan that has been assigned for collection of the reduction in outstanding balance by
23 sending notice electronically to the borrower's last known e-mail address in FastCredit's records or,
24 if a borrower has opted out of receiving electronic communications from FastCredit, by sending
25 notice by U.S. mail to the borrower's last known postal mail address in FastCredit's records.

26 An outstanding loan is any loan that has not been paid in full. A delinquent account is any
27 account that is more than 15 days late with any payment.

28 7. Remaining Refunds. The remaining refunds shall be paid by FastCredit by check

1 directly to the borrower over an 18-month period, as set forth in paragraph 5 above, commencing 30
2 days after the effective date of this Consent Order. FastCredit agrees to use its best efforts to issue
3 such refunds at a rate that ensures a similar dollar amount of refunds per month. The parties
4 recognize that due to the different size loans and refunds, monthly amounts may vary.

5 8. Quarterly Reports. FastCredit shall submit quarterly reports to the Commissioner
6 setting forth information regarding all refunds made during that quarter. The quarterly reports shall
7 be in Microsoft Excel spreadsheet format, and shall include at a minimum for all refunds issued
8 during the quarter, the borrower loan number, name, address, loan amount, loan date, interest rate,
9 refund amount, date of refund, manner of refund, refund check number (if applicable), and
10 overcharge item number. FastCredit shall submit evidence of such refunds to the Commissioner
11 simultaneously with the quarterly reports, which evidence shall include a copy of the refund checks,
12 loan balances, and/or advisements of outstanding balance reductions to assignees and borrowers of
13 charged-off loans assigned to outside collections, as applicable, to each refund. The first quarterly
14 report shall be due February 28, 2018 for the quarter commencing on the effective date of this
15 Consent Order through December 31, 2017. The remaining quarterly reports shall be due (i) May 31,
16 2018 for the quarter January 1 through March 31, 2018; (ii) August 31, 2018 for the quarter April 1
17 through June 30, 2018; (iii) November 30, 2018 for the quarter July 1 through September 30, 2018;
18 (iv) February 28, 2019 for the quarter October 1 through December 31, 2018; and (v) May 31, 2019
19 for the quarter January 1 through March 31, 2019.

20 9. Refunds by Check. For all refunds provided by check, FastCredit shall send the
21 refund checks by first class mail to the last known postal mail address of the borrower listed in the
22 records of FastCredit with a request for address correction on each envelope. FastCredit shall re-
23 send all refund checks returned by the United States Post Office with a forwarding or corrected
24 address.

25 10. Outstanding Refunds. FastCredit shall escheat all refund checks returned as
26 undeliverable by the United States Post Office to the State Controller's Office within the time-period
27 provided by the Unclaimed Property Act (Code Civ. Proc., § 1500 et seq.).
28

1 11. Debt Extinguishment. FastCredit agrees, within 180 days of the effective date of this
2 Consent Order, to extinguish all debt surrounding the 69 loans identified in Exhibit A attached and
3 incorporated herein, and to resolve any credit issues caused by FastCredit to the affected borrowers
4 by contacting the appropriate credit reporting agency(s) and having any blemishes or negative items
5 on these borrowers' credit reports related to the FastCredit debt removed.

6 12. Probation. FastCredit agrees that, in addition to any regulatory examination that may
7 be scheduled pursuant to the provisions of the CFLL, the Commissioner may, during the two-year
8 period subsequent to the effective date of this Consent Order, conduct a special examination of
9 FastCredit to determine if FastCredit is in compliance with the CFLL provisions set forth in
10 paragraph E above. FastCredit further agrees to the revocation of its CFLL license(s) if the
11 Commissioner finds, after a hearing to be held before an administrative law judge in accordance with
12 the Administrative Procedure Act, Government Code section 11500 et seq., that such special
13 examination revealed a 10 percent violation rate in any of the CFLL provisions set forth in paragraph
14 E above. FastCredit waives its right to any reconsideration, appeal or other right to review of any
15 finding by the Commissioner made pursuant to this paragraph which may be afforded pursuant to the
16 CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
17 other provision of law in connection therewith. FastCredit acknowledges that this paragraph does
18 not limit the Commissioner's authority to take other actions against FastCredit for alleged
19 violation(s) of the CFLL provisions set forth in paragraph E above that occur after the effective date
20 of this Consent Order, or any other provision of the CFLL no matter when such alleged violation(s)
21 occurred.

22 13. Waiver of Hearing Rights. FastCredit acknowledges that the Commissioner is ready,
23 willing, and able to proceed with the filing of an administrative enforcement action on the charges
24 contained in this Consent Order. FastCredit hereby waives the right to any hearings, and to any
25 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFLL, the
26 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
27 provision of law. FastCredit further expressly waives any requirement for the filing of an Accusation
28 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, FastCredit

1 effectively consents to this Consent Order and Desist and Refrain Order becoming final.

2 14. Evidence of Prior Refunds. Within 30 days of the effective date of this Consent
3 Order, FastCredit shall submit evidence of refunds in the amount of \$39,546.91 that FastCredit
4 represents have previously been made to borrowers. Evidence of such refunds shall include a
5 spreadsheet in Microsoft Excel format that contains the loan number, borrower name, borrower
6 address, check number, check/credit date, check/credit amount, and check clear date for each refund.

7 15. Policies and Procedures: The Commissioner hereby acknowledges that FastCredit
8 has submitted information demonstrating that it has adopted policies and procedures addressing the
9 issues described in paragraph E above.

10 16. Effect of Consent Order on License. In consideration of the information provided to
11 the Commissioner by FastCredit as described in paragraph 15 above and FastCredit’s agreement to
12 the entry of this Consent Order and payment of penalties as provided for in paragraphs 2-4 above,
13 the Commissioner hereby agrees that, except as otherwise set forth in this Consent Order, she shall
14 not suspend and/or revoke the finance lender/broker license of FastCredit. Accordingly, this
15 Consent Order does not affect the licensing status of FastCredit.

16 17. Information Willfully Withheld. This Consent Order may be revoked and the
17 Commissioner may pursue any and all remedies available under law against FastCredit if the
18 Commissioner later discovers that FastCredit knowingly or willfully withheld information used for
19 and relied upon in this Consent Order.

20 18. Failure to Comply with Consent Order. FastCredit agrees that if it fails to comply
21 with the terms of this Consent Order within five days after written notice of demand, the
22 Commissioner may, in addition to all other available remedies under the CFLL, summarily suspend
23 the CFLL licenses of FastCredit until FastCredit is in compliance. FastCredit waives any notice and
24 hearing rights to contest such summary suspensions which may be afforded under the CFLL, the
25 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
26 provision of law in connection therewith.

27 19. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
28 interest.

1 20. Third Party Actions. This Consent Order does not create any private rights or
2 remedies against FastCredit, create any liability for FastCredit or limit defenses of FastCredit for any
3 person or entity not a party to this Consent Order.

4 21. Full and Final Settlement. The parties hereby acknowledge and agree that this
5 Consent Order is intended to constitute a full, final, and complete resolution of the findings of the
6 2015 regulatory examination described in paragraph E. above, and that no further proceedings or
7 actions will be brought by the Commissioner in connection with these matters under the CFL, or
8 any other provision of law, excepting therefrom any proceeding to enforce compliance with the
9 terms of this Consent Order.

10 22. Commissioner’s Duties: The parties acknowledge and agree that nothing contained
11 in this Consent Order shall operate to limit the Commissioner’s ability to assist any other agency
12 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any
13 such agency against FastCredit or any other person based upon any of the activities alleged in these
14 matters or otherwise.

15 23. Independent Legal Advice. Each party represents, warrants, and agrees that it has
16 received independent advice from its attorney(s) and/or representatives with respect to the
17 advisability of executing this Consent Order.

18 24. Reliance. Each party represents, warrants, and agrees that in executing this Consent
19 Order it has relied solely on the statements set forth herein and the advice of its own counsel and/or
20 representative. Each party further represents, warrants, and agrees that in executing this Consent
21 Order it has placed no reliance on any statement, representation, or promise of any other party, or
22 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
23 person or entity to make any statement, representation or disclosure of anything whatsoever. The
24 parties have included this clause: (1) to preclude any claim that any party was in any way
25 fraudulently induced to execute this Consent Order, and (2) to preclude the introduction of parol
26 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

27 25. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenants

1 between the parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the parties, their respective representatives, and any other person or entity, with
4 respect to the subject matter covered hereby.

5 26. No Presumption from Drafting. In that the parties have had the opportunity to draft,
6 review and edit the language of this Consent Order, no presumption for or against any party arising
7 out of drafting all or any part of this Consent Order will be applied in any action relating to,
8 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil
9 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
10 language of a contract should be interpreted most strongly against the party who caused the
11 uncertainty to exist.

12 27. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
13 Consent Order shall not operate to waive any other provision set forth herein. No waiver,
14 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is
15 in writing and signed by the parties affected by it.

16 28. Headings and Governing Law. The headings to the paragraphs of this Consent Order
17 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
18 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
19 accordance with and governed by California law.

20 29. Effective Date. This Consent Order shall not become effective until signed and
21 delivered by the parties.

22 30. Counterparts. This Consent Order may be executed in one or more separate
23 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
24 together constitute a single document.

25 31. Notice. Any notice required under this Consent Order shall be addressed as follows:

26 To FastCredit Financial, Inc.: Benjamin Diehl, Special Counsel
27 Stroock & Stroock & Lavan, LLP
28 2029 Century Park East
Los Angeles, California 90067
bdiehl@stroock.com

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To the Commissioner: Judy L. Hartley, Esq.
Senior Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
judy.hartley@dbo.ca.gov

32. Public Record. FastCredit acknowledges that this Consent Order is a public record.

33. Settlement Authority. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order.

Dated: 10/12/17 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 10/11/17 FASTCREDIT FINANCIAL, INC.

By _____
WARREN BERGHOFF, President

APPROVED AS TO FORM:
STROOCK & STROOCK & LAVAN, LLP

By _____
BENJAMIN DIEHL, ESQ. attorneys for
FASTCREDIT FINANCIAL, INC.

Department of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel